Tects. II-27—60,004—17-11-48

Home (194 9) Department.

MS. SERIES.

G.O. NO. Ms. 3859

Dated 26th September 1949.

Despatch Abstract.]

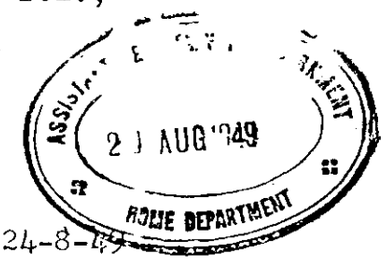
Criminal Justice - Appeal against acquittals - C.C.Nos. 2304 to 2315 of 1948 on the file of Stationary Sub Magistrate Bellary Application - Sanctioned.

From

Syed Md. Nakhuda Sahib, Bahadur, I.A., B.L.,
District Magistrate, Bellary.

To

The Secretary to Government,
Home Department, Madras.



Ref.C.No.2596/49E1 Dated 24-8-49

Sir,

Sub;- Criminal Justice- Bellary District- Appeal against Acquittal C.C.Nos.2304/48 to 2315/48 on the file of S.S.M. Bellary.

*****

C.C.Nos.2304/48 to 2315/48 on the file of the Sty. Sub-Magistrate, Bellary are prohibition cases under Section 4(1)(g) of the Madras Prohibition Act. The punishment provided for an offence under Section 4(1)(g) of the Act is imprisonment which may extend to two years or with fine which may extend to Rs.5000/- or with both. Hence these cases are triable by warrant procedure.

2. The cases were pending for the examination of P.W.s. on 25-6-49, the P.W's. were absent and the Magistrate has directed the Prohibition petty officer to produce the witnesses on 29-6-49 On 29-6-49, the Magistrate found the prohibition staff and the P.W's. absent. He therefore acquitted the accused under Section 247 Cr.P.C. The reasons given by the Magistrate are that the prohibition staff did not attend the court for conducting the prosecution and that witnesses were not produced on that date.

3. The orders of acquittal under Section 247 Cr.P.C in the above cases are illegal for the following reasons.

Section 247 Cr.P.C. can be applied only to summons procedure cases and even in summons cases, when the complainant is Rex, the Magistrate may dispense with the attendance of the complainant and proceed with the case. But the cases in question are warrant procedure cases and therefore Section 247 Cr.P.C. does not apply to them.

On 25-6-49, the Magistrate has not issued summons for the appearance of the P.Ws. and therefore he cannot insist on their production by the prohibition staff. The procedure adopted by the Magistrate in disposing of these Cases is wrong and irresponsible

I therefore submit that the Government may be pleased to move the High Court in appeal. The case records in C.C.2304/48 to 2315/48 are enclosed for reference and return.

For District Magistrate.

K.R.25/8

30/8/49

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Home dept

Memo No 82046 D/49—1 dt 30/8/49

Criminal Justice — Appeal against acquittals — C.C Nos 2304 to 2315 of 1948 on the file of S.S.M., Bellary

Application

Ref From the D.M., Bellary C.No. 2596/49 E.1 dt 24.8.49

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Pld—

Referred to the P.P., Madras for remarks which should be subtd. not later than 16.9.49

Sd

30/8/49

30/8/49

Submitted

Sd

25.8.49

To the P.P., Madras (With cf and papers below in orgl to be returned with reply)

RD. 11.9.49

Note :- The date of ~~judgment~~ order of acquittal by the S.S.M Bellary } of B dt 29.6.49

6 months' time will expire on 28.9.49

8 months' time will expire on 28.12.49

Sd.

30/8/49

~~Recorded from~~ The Dn has stated that the proceedings adopted by the Magistrate was wrong and irregular

4

out the Dy. has not suggested any
or action against the Magistrate. As
~~the~~ final orders are passed, the
the file may go to Public (Mlly)
for considering whether the question
whether any action should be
taken against the Magistrate.

Sd/8

Sd/-
30.8.18

Sri V.L.Ethiraj,
Bar-at-Law.,
Public Prosecutor,Madras.

To
The Secretary to Government,
Home Department, Madras.

Opn.No.81/49,dated 15th Septr.1949

Sir,

Sub: Appeal against acquittals - C.C.Nos.2304 to 2315 of 1948, S.S.M.Bellary - Forwarding opinion.

With reference to Memorandum No.82046 D/49-1,Home, dated 30-8-1949 I have the honour to give below my opinion in the above matter.

2. The papers received for reference are returned herewith.

Opinion.

The Stationary Sub Magistrate,Bellary tried and acquitted the accused in the above cases of the offence under Sec. 4(1)(g) of the Madras Prohibition Act. The Magistrate acquitted the accused under Sec. 247 Crl.Procedure Code on the ground that the Prohibition Petty Officer who was directed to produce the witnesses was absent on the particular date of the hearing. The cases are triable under warrant chapter and Section 247 is not applicable. The orders under Sec. 247nCriminal Procedure Code are illegal and I am of opinion that appeals against acquittals in all the above cases are likely to be successful.

G. S. Swaminathan
Asst.Public Prosecutor.
15.9.49

89716
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Public Prosecutor's Office,
Madras dated 15-9-1949.

Sir,

Sub: Appeal against acquittals - C.C.Nos. 2304 to 2315 of 1948
S.S.M.Bellary

Ref: Memorandum No.82046 D/49-1,Home, dated 30-8-1949 ~~H.P.S~~
Opinion 81/49.

In the above matter if Government decide to file the appeals, the records may be sent to the District Magistrate,Bellary and he may be asked to send 2 copies of the calendar and judgment in each of the twleve cases typed separately.

Manager. 15.9.49

To

The Superintendent,
D- Section.
Home Department, Madras.

eNo. 82046 D/49

Home dept

G.O.Ms.No. 3859 dt 26.9.49

Criminal Justice - Appeal against acquittals - C.C. Nos 2304 to 2315 of 1948 on the file of SS.M Bellary - Sanctioned

Read:-

From the D.M., Bellary C.No.2596/49 E.1 dt 24.8.49

From the P.P., Madras opw. No 81/49 dt 15.9.1949

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Order

Under sec. 417 of the code of Criminal Procedure, 1898, the P.P., Madras is requested to present an appeal to the High court against the acquittals by the Sty. Sub-magistrate, Bellary of the accused in C.C. Nos 2304 to 2315 of 1948 on his file

2. The records sent with the letter of the D.M., Bellary are returned to the D.M., Bellary and he is requested to send direct to P.P. Madras two copies of the calendar and judgment in each of the twelve cases, typed separately

SE

21.9.49

24/9/49

23.9.49

Approved 30.9.49

To the P.P., Madras (with a copy of p1 c/f)

To the D.M., Bellary with a copy of pp 5-6 c/f and records kept below in org(.)

Note:- The draft order above is, in accordance with the opinion of the P.P., Madras

The date of judgment is 29.6.1949 Six months time within which the appeal should be preferred expires on 28.12.1949.

c/o ps c/f

Note:- The D.M., Bellary has stated that the procedure adopted by the Sty. Sub. magistrate in acquitting the accused in C.C.Nos 2304 to 2315 of 'A' on p.16 of on his file was wrong and irresponsible. & office note But the D.M., has not suggested any action at pp3-4 of against the Magistrate. After issue of the draft questionnaire, the file may be sent to Pub.(mily) for considering the question whether any action should be taken against the Magistrate, ~~after issue of the questionnaire~~.

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1.9.49
20.9.49.

A of preceding
M:2842, Home, 4
26/7/48

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Home o 892 of 60/45-2
6.X.49.

Pub(mily) as

Issued as G.O.Ms No 3859
26.9.49

Public (Mily) dept.

May be perused and Returned to Home. It seems sufficient if action against the Sub Magistrate is taken after the result of the appeal is known.

Home will no doubt send the file to this Dept. after the result of the appeal is known.

8.10.49

Home dept

11-10-49

Pub (Mily) ms-5621-12/1949

ASSISTANT SECRETARY TO GOVERNMENT
30 OCT 1949
HOME

With reference to 'A', please see the Public (Mily) dept's note at M above. The file may be closed after making a call book entry against 30.12.1949 awaiting the result of appeal in the High court.

Sy
14.10.49
14.10.49.

ASSISTANT SECRETARY TO GOVERNMENT
5621
1 OCT 1949
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PUBLIC DEPARTMENT

C.B entry no 17 ms